

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

SIGNATURE BANK,

Plaintiff,

- against -

**MOTION TO ADMIT
COUNSEL,
PRO HAC VICE**

Civil Action No. 08-CIV-3893

**AHAVA FOOD CORP., LEWIS COUNTY
DAIRY CORP., SCHWARTZ AND SONS
QUALITY DISTRIBUTORS, INC., MOISE
BANAYAN, BANAYAN a/k/a CHANA
BANAYAN, REBECCA BANAYAN a/k/a
REBECCA BARIMYAN a/k/a REBECCA
BANAYAN-LIEBERMAN, and FARIBORZ
BANAYAN a/k/a AARON BANAYAN,**

Defendants.

Pursuant to Rule 1.3(c) of the Local Rules of the United States District Courts for the Southern and Eastern Districts of New York: I, J. Eric Charlton, a member in good standing of the bar of this Court, hereby move for an Order allowing the admission *pro hac vice* of:

Applicant's Name: David P. Antonucci., Esq
Firm Name: Antonucci Law Office, LLP
Address: 12 Public Square
City/State/Zip: Watertown, New York 13601
Phone Number: (315) 788-7300
Fax Number: (315) 788-1634

David P. Antonucci is a member in good standing of the Bar of the State of New York.

There are no pending disciplinary proceedings against David P. Antonucci in any State or Federal Court.

JUN 24 2008
72 925-655067

DATED: May 22, 2008

HISCOCK & BARCLAY, LLP

By: 
J. Eric Charlton (JC-0878)

Office and Post Office Address
One Park Place
300 South State Street
Syracuse, New York 13221-2078
Telephone (315) 425-2716
Facsimile: (315) 425-8576
E-mail: echarlton@hiscockbarclay.com

DAVID P. ANTONUCCI ESQ.
Antonucci Law Firm LLP
12 Public Square
Watertown, New York 13601
Tel. 315-788-7300; Facsimile 315-788-164

Attorneys for Defendants Lewis County Dairy Corp.
St. Lawrence Food Corp., Ahava Food Corp.,
Schwartz and Sons Quality Distributors, Inc.
Yoni Realty LLC and Moise Banayan

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

SIGNATURE BANK,

Plaintiff,

v.

DECLARATION OF
DAVID P. ANTONUCCI ESQ.

08 Civ. 3893

AHAVA FOOD CORP. D/B/A NORTH COUNTRY
CHEESE CORP., LEWIS COUNTY DAIRY CORP.
ST. LAWRENCE FOOD CORP. D/B/A PRIMO
FOODS, YONI REALTY LLC, SWARTZ AND
SONS QUALITY DISTRIBUTORS, INC. MOISE
BANAYAN, ANA BANAYAN A/K/A CHANA
BANAYAN, REBECCA BARIMYAN, REBECCA
BANAYAN-LIEBERMAN, FARIBORZ BANAYAN,
A/K/A AARON BANAYAN, RUBIN BEITYAKOV, ARI
KATZ, AHAVA OF CALIFORNIA LLC, D/B/A AHAVA
NATIONAL FOOD DISTRIBUTOR AND NORTH COUNTRY
MANUFACTURING, AND JOHN DOES 1 THROUGH 50.

Defendants.

David P. Antonucci Esq. being duly sworn and deposed states as follows:

1. I am the attorney for Lewis County Dairy Corp. St. Lawrence Food Corp.,
Ahava Food Corp., Schwartz and Sons Quality Distributors, Inc. Yoni Realty LLC and

Moise Banayan (the “Defendants”) As such, I am familiar with the facts and circumstances of this case.

2. I make this declaration in response to the order to show cause of the Plaintiff seeking various relief.

3. Largely, the court’s order to show cause seeks a continuation of the prior orders to show cause and relief against Ahava of California LLC. No other relief is sought against the Defendants except continuation of the prior orders of the Supreme Court, County of New York.

4. Apparently, due to the 11 USC 105, 362 stay could not and did not seek any other relief from the Defendants except inspection of its books and records and inspection of its premises. Subject to the following, the same is not per se objectionable. However, as set forth below, judicial economy and the doctrine of abstention should dictate these matters be addressed elsewhere.

5. We further note counsel for Plaintiff has recently suggested that other relief should be entered against the Defendant. The order to show cause is res gestae and provides no notice of any relief against the Defendants save a continuation of the Supreme Court, State of New York’s prior orders and discovery. The court should not ex post facto expand the relief requested in the order to show cause to include remedies not available as a matter of law at the time of filing.

6. Ahava of California has spoken for itself. Again, we reiterate that position by reference. We join the same in all respects.

7. We further note the Plaintiff has filed a motion in the United States Bankruptcy Court NDNY seeking the appointment of an 11 USC 1104 trustee in the Individual Chapter 11 case of Moise Banayan. The same was first returnable today.

8. That motion seeks a trustee that would control the shares of the corporate Defendants. If granted, it would obviate the need for a receiver.

9. The Hon. Stephen Gerling, Chief Judge of the United States Bankruptcy Court for the Northern District of New York (hereinafter the "Bankruptcy Court") denied any relief from the bench and ordered an evidentiary hearing with mutual discovery.

10. The allegations of fraud, fraudulent conveyances, piercing the corporate veil and related claims for relief are the same in the motions before both courts.

11. In fact, the declarations of John Oleske Esq. submitted in this action with the prior orders to show cause were attached to the moving declaration in the Bankruptcy Court. The moving declaration did little more, factually, that reiterate and refer to those documents.

12. Respectfully, Mr. Banayan is a debtor of limited means. The matter should not be litigated in both this court and the Bankruptcy Court. If the motion is successful in Bankruptcy Court, this motion will be moot as concerns the Defendants.

13. The court should abstain and allow the matter to be resolved, including all discovery issues, in the Bankruptcy Court with respect to the Defendants.

14. The Bankruptcy Court has already stated it will supervise immediate discovery and schedule a prompt hearing on the matter.

15. The Defendants should not be burdened by duplicative litigation that might result in inconsistent verdicts. The same flies in the face of judicial economy.

16. As the matter was just decided this date at approximately 12:30 P.M. deponent also requests the ability to submit a memorandum of law indicating why this court, respectfully, should abstain to the Bankruptcy Court. The Defendant with travel and the conference before the court this date, had literally no time to prepare the same and could not have anticipated the decision of the Bankruptcy Court.

17. We also note the action is not joined, many of the Defendants have not been served and are unrepresented, and resolution of the matter in this court could take many months.

18. For all these reasons, the order to show cause should be denied.

Watertown, New York
May 22, 2008



David P. Antonucci

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

SIGNATURE BANK,

Plaintiff,

- against -

**AHAVA FOOD CORP., LEWIS COUNTY
DAIRY CORP., SCHWARTZ AND SONS
QUALITY DISTRIBUTORS, INC., MOISE
BANAYAN, BANAYAN a/k/a CHANA
BANAYAN, REBECCA BANAYAN a/k/a
REBECCA BARIMYAN a/k/a REBECCA
BANAYAN-LIEBERMAN, and FARIBORZ
BANAYAN a/k/a AARON BANAYAN,**

Defendants.

**AFFIDAVIT OF
J. ERIC CHARLTON IN
SUPPORT OF MOTION TO
ADMIT COUNSEL,
*PRO HAC VICE***

Civil Action No. 08-CIV-3893

STATE OF NEW YORK)
)
COUNTY OF ONONDAGA) ss:

J. Eric Charlton, being duly sworn, hereby deposes and says as follows:

1. I am an attorney duly admitted to practice in the courts of the State of New York, and a member of Hiscock & Barclay, LLP, with an office in Syracuse, New York. I make this statement based on my personal knowledge of the facts set forth herein and in support of motion to admit David P. Antonucci as counsel *pro hac vice* to represent Defendants in this matter.

2. I am a member in good standing of the bar of the State of New York, and was admitted to practice law in 1977. I am also admitted to the bar of the United States District Court for the Southern District of New York, and am in good standing with this court.

3. I have known David P. Antonucci since 1991.

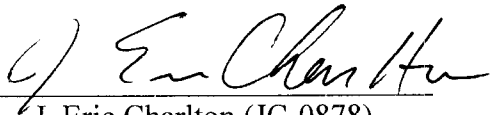
4. Mr. Antonucci is of counsel at Antonucci Law Firm, LLP, in Watertown, New York.

5. I have found Mr. Antonucci to be a skilled attorney and a person of integrity. He is experienced in federal practice and is familiar with the Federal Rules of Civil Procedure.

6. Accordingly, I am pleased to move the admission of David P. Antonucci, *pro hac vice*.

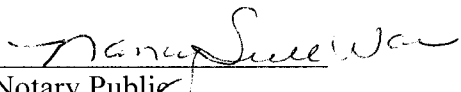
7. I respectfully submit a proposed order granting the admission of David P. Antonucci, *pro hac vice*, which is attached hereto as Exhibit A.

WHEREFORE, it is respectfully requested that the motion to admit David P. Antonucci, *pro hac vice*, to represent Defendants in the above captioned matter be granted.



J. Eric Charlton (JC-0878)

Sworn to before me this
22nd day of May 2008



Notary Public

FILED
MAY 22 2008
2011

**SUPREME COURT OF
THE STATE OF NEW YORK
APPELLATE DIVISION, FOURTH DEPARTMENT
ROCHESTER, NEW YORK**

I, PATRICIA L. MORGAN, Deputy Clerk of the Appellate Division of the Supreme Court in the Fourth Judicial Department, State of New York, do hereby certify that

DAVID PETER ANTONUCCI

*was duly admitted to practice as an attorney and counselor at law in all courts of this state by this Court on, **January 14, 1988**, and appears in good standing upon the roll of attorneys and counselors, and other records, in this office and has registered with the administrative office of the Courts as required by Judiciary Law §468-a.*

IN WITNESS WHEREOF, *I have hereunto set my hand and affixed the seal of this Court, at the City of Rochester, June 5, 2008.*



Patricia L. Morgan

Deputy Clerk of the Court

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

SIGNATURE BANK,

Plaintiff,

- against -

**AHAVA FOOD CORP. d/b/a NORTH COUNTRY
CHEESE CORP., LEWIS COUNTY DAIRY CORP.,
ST. LAWRENCE FOOD CORP. d/b/a PRIMO
FOODS, YONI REALTY, LLC, SCHWARTZ AND
SONS QUALITY DISTRIBUTORS, INC., MOISE
BANAYAN, ANA BANAYA a/k/a CHANA
BANAYAN, REBECCA BANAYAN a/k/a
REBECCA BARIMYAN a/k/a REBECCA
BANAYAN-LIEBERMAN, FARIBORZ BANAYAN
a/k/a AARON BANAYAN, RUBEN BEITYAKOV,
ARI KATZ, AHAVA OF CALIFORNIA, LLC d/b/a
AHAVA NATIONAL FOOD DISTRIBUTOR and
NORTH COUNTRY MANUFACTURING, and
JOHN DOES 1 through 50,**

Defendants.

**ORDER FOR ADMISSION
PRO HAC VICE
ON WRITTEN MOTION**

Civ. Action No. 08 Civ. 3893

Upon the motion of J. Eric Charlton said sponsor attorney's affidavit in support;

IT IS HEREBY ORDERED that

Applicant's Name: David P. Antonucci, Esq.
Firm Name: Antonucci Law Office, LLP
Address: 12 Public Square
City/State/Zip: Watertown, New York 13601
Telephone/Fax: (315) 788-7300 / (315) 788-1643
Email Address: Antonlaws@nnymail.com

is admitted to practice *pro hac vice* as counsel for Ahava Food Corp., Lewis County Dairy Corp., Schwartz and Sons Quality Distributors, Inc., St. Lawrence Food Corp, Yoni Realty and Moise Banayan, in the above

captioned case in the United States District Court for the Southern District of New York. All attorneys appearing before this Court are subject to the Local Rules of this Court, including the Rules governing discipline of attorneys. If this action is assigned to the Electronic Case Filing (ECF) system, counsel shall immediately apply for an ECF password at nysd.uscourts.gov. Counsel shall forward the *pro hac vice* fee to the Clerk of Court.

Dated:
City, State:

United States District/Magistrate Judge

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

SIGNATURE BANK,

Plaintiff,

- against -

**AHAVA FOOD CORP. d/b/a NORTH COUNTRY
CHEESE CORP., LEWIS COUNTY DAIRY CORP.,
ST. LAWRENCE FOOD CORP. d/b/a PRIMO
FOODS, YONI REALTY, LLC, SCHWARTZ AND
SONS QUALITY DISTRIBUTORS, INC., MOISE
BANAYAN, ANA BANAYA a/k/a CHANA
BANAYAN, REBECCA BANAYAN a/k/a
REBECCA BARIMYAN a/k/a REBECCA
BANAYAN-LIEBERMAN, FARIBORZ BANAYAN
a/k/a AARON BANAYAN, RUBEN BEITYAKOV,
ARI KATZ, AHAVA OF CALIFORNIA, LLC d/b/a
AHAVA NATIONAL FOOD DISTRIBUTOR and
NORTH COUNTRY MANUFACTURING, and
JOHN DOES 1 through 50,**

Defendants.

State of New York)
County of New York) SS.:

The undersigned, Jennifer Jones, affirms: on May 22, 2008, deponent served the Declaration, Motion to Admit Counsel *Pro Hac Vice*, Affidavit of Eric Charlton, Good Standing Certificate, Order for Admission for *Pro Hac Vice* on the following:

Hon. Naomi R. Buchwald
United States District Court SDNY
500 Pearl Street
Room 2270
New York, New York 10007

David Feuerstein, Esq.
Herrick & Feinstein
2 Park Avenue
New York, New York 10016

AFFIDAVIT OF SERVICE

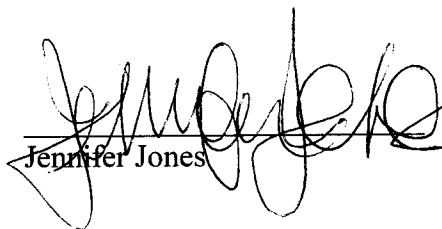
Civ. Action No. 08 Civ. 3893

Lawrence Fox, Esq.
Kornstein, Veisz, Wexler & Pollard
757 Third Avenue
New York, New York 10017

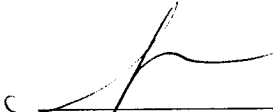
Robert W. Hirsh, Esq.
Robert W. Hirsh & Associates
8383 Wilshire Boulevard, Suite 510
Beverly Hills, California 90211

By FAX and by regular mailing a true copy of the same enclosed in a properly addressed wrapper postage paid, in an official depository under the exclusive care and custody of the United States Post Office Department within the State of New York.

DATED: May 22, 2008


Jennifer Jones

Sworn to me this
22nd day of May 2008.


Notary Public

JUDY McDONALD
NOTARY PUBLIC, STATE OF NEW YORK
REG. NO. 01MC6108449
QUALIFIED IN JEFFERSON COUNTY
COMMISSION EXPIRES 4/19/2012